IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3564 OF 2005

The New India Assurance Co.Ltd., ..Petitioner.

Versus

Master Suvradeep Tapas Choudhary & Ors. ..Respondents.

Mr. A.B. Barve for the petitioner.

Mr. M.B.Kotak for the Respondent No. 1.

CORAM : S. A. BOBDE, J.

DATED : 22nd SEPTEMBER, 2005.

P.C.:

1. Rule returnable forthwith.

2. Mr. Kotak, Advocate, waives service of rule for the Respondent No.1.

3. Heard by consent.

4. The petitioner Assurance Company has challenged the order under section 140 of the Motor Vehicles Act. The only contention raised on behalf of

the petitioner is that cover note No. 263159 with a validity period from 18.11.2000 to 17.11.2001 was not issued by the petitioner company in respect of the vehicle, which injured the respondent, but was issued to one Subhash Moolchand Sonar. The contention of the petitioner company is that on the date of the accident i.e. on 2.11.2001 the vehicle which injured the respondent was not insured by any policy or cover note.

5. Mr. Kotak, the learned counsel for the respondent submits that the MACT has acted on the basis of the evidence of the witness from R.T.O., who deposed that the vehicle was insured under cover note No. 263159. The insurance company failed to cross-examine to said witness on this point at that stage.

6. In the circumstances of the case, having regard to the object of section 140 of the Motor Vehicles Act, I am of view that it would serve the interest of justice, if the impugned order is upheld with a liberty to the petitioner company to prove that the vehicle was not insured under cover note No. 263159, after a bank guarantee is furnished by the respondents for the sum receivable under the order

under section 140.

7. It is made clear that the respondents shall be allowed to withdraw the amount only upon furnishing the bank guarantee to the satisfaction of the M.A.C.T.

8. Rule is disposed of in the above terms.

DT.22.09.05 (S.A.BOBDE,J)

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